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No. 87-1036

In the
Supreme Court of the United States

OCTOBER TERM, 1987

HELEN DEBRECENI, FUND MANAGER OF THE
NEW ENGLAND TEAMSTERS AND TRUCKING
INDUSTRY PENSION FUND,
PETITIONER,

v.

F. WILLIAM GRAF,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

Brief for Respondent in Opposition

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January 15, 1988

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

Question Presented

May an individual shareholder or corporate officer be held personally liable for a corporation's withdrawal liability under the Multi-Employer Pension Plan Amendments Act of 1980 absent facts sufficient to "pierce the corporate veil" of the corporation.

List of Parties

The parties to the proceeding below were the Petitioner, the New England Teamsters and Trucking Industry Pension Fund, and the Respondent, F. William Graf.

Table of Contents

Question Presented i

List of Parties iii

Opinions Below 2

Jurisdiction 2

Applicable Statutory Provisions 2

Statement of the Case 3

A. Statement of Prior Proceedings 3

B. Factual Background 5

Reasons for Denying the Writ 8

A. There is No Constitutional Issue or Important Question of Federal Law 9

B. There is No Conflict in the Circuit Courts of Appeals 10

C. There is No Conflict with Congressional Intent 13

D. There is No Conflict with Prior Decisions of the Court 14

Conclusion 16

Table of Authorities Cited

Cases

Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) 14

Alman v. Danin, 801 F.2d 1 (1st Cir. 1986) 11

Canario v. Byrnes Express & Trucking Company, 644 F. Supp. 744 (E.D.N.Y. 1986) 11

Central Pennsylvania Teamsters Pension Fund v. Service Group, Inc., 645 F. Supp. 996 (E.D. Pa. 1985) 12

Combs v. Sun-Up Coal Co., 634 F. Supp. 13 (D.D.C. 1985) 11

Connolly v. PBGC, 475 U.S. 211 (1986) 14

Connors v. B.M.C. Coal Co., 634 F. Supp. 74 (D.D.C. 1986) 11

Connors v. Darryll Waggle Construction Co., Inc., 631 F. Supp. 1188 (D.D.C. 1986) 11

Connors v. P & M Coal Co., 801 F.2d 1373 (D.C. Cir. 1986) 11, 15

Debreceni v. Graf Bros. Leasing, Inc., 828 F.2d 877 (1st Cir. 1987) *passim*

Donovan v. Agnew, 712 F.2d 1509 (1st Cir. 1983) 9

Donovan v. Sabine Irrigation Company, Inc., 695 F.2d 190 (5th Cir. 1983) 9, 10

Massachusetts State Carpenters Pension Fund v. Atlantic Diving Co., Inc., 635 F. Supp. 9 (D. Mass. 1984) 10

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985) 14, 15

Operating Engineers Pension Trust v. Reed, 726 F.2d 513 (9th Cir. 1984) 11

Pilot Life Insurance Co. v. Dedeaux, ____ U.S. ____, 107 S.Ct. 1549 (1987) 14, 15

Refined Sugars, Inc. v. Local 807 Labor Management Pension Fund, 632 F. Supp. 630 (S.D.N.Y. 1986) 11

Seymour v. Hull & Moreland Engineering, 605 F.2d 1105 (9th Cir. 1979) 15

Solomon v. Klein, 770 F.2d 352 (3d Cir. 1985) 11, 12

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 15

Trustees of UIU Health & Welfare Fund v. New York Flame Proofing Co., 649 F. Supp. 843 (S.D.N.Y. 1986) 15
United States v. Constantine, 296 U.S. 287 (1935) 13

STATUTES

28 U.S.C. § 1254(1) 2
29 U.S.C. § 203 3, 9, 10
29 U.S.C. §§ 1001 *et seq.* 2, 3
29 U.S.C. § 1002 2, 3, 9, 10
29 U.S.C. § 1144 14
29 U.S.C. § 1301 10
29 U.S.C. §§ 1381 *et seq.* 2, 3
29 U.S.C. § 1381 2, 3, 9, 10
29 U.S.C. § 1451 3

CONGRESSIONAL MATERIALS

H.R. No. 96-869, 9th Cong., 2d Sess., Reprinted in 1980 U.S. Code Cong. & Admin. News at 2918, 2919-20 and 2935 14

SUPREME COURT RULES

Rules of the Supreme Court of The United States Rule 17.1(a) 10

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F. WILLIAM GRAF,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Brief for Respondent in Opposition

The Respondent F. William Graf respectfully prays that the Court deny the Petition for a Writ of Certiorari sought by Petitioner Helen Debreceni, Fund Manager of the New England Teamsters and Trucking Industry Pension Fund to review the judgment of the United States Court of Appeals for the First Circuit entered in the above-entitled proceeding on September 18, 1987.

Opinions Below

The opinion and judgment of the United States Court of Appeals for the First Circuit is reported at 828 F.2d 877 and is reprinted as an appendix to the petition at pages 1a-9a.

The opinion and judgment of the United States District Court for the District of Massachusetts (Mazzone, D.J.) is not reported and is reprinted as an appendix to the petition at pages 10a-19a.

Jurisdiction

The United States Court of Appeals for the First Circuit entered judgment on September 18, 1987. Petitioners sought review of the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

Applicable Statutory Provisions

Petitioner's claim does not involve any provisions of the Constitution of the United States of America. Rather, Petitioner's claim involves the construction and interpretation of the Multi-Employer Pension Plan Amendments Act of 1980 ("MPPAA"), Pub. L. 96-364, *codified at* 29 U.S.C. §§ 1381 *et seq.* which amended the Employee Retirement Income Security Act of 1974 ("ERISA"), *codified at* 29 U.S.C. §§ 1001 *et seq.* The specific provisions involved in Petitioner's claim are the establishment of withdrawal liability for an employer who withdraws from a multi-employer plan under the MPPAA, 29 U.S.C. § 1381; and the definition of "employer" in ERISA, 29 U.S.C. § 1002(5) and (9). In addition, Petitioners attempt to analogize the definition of "employer" in ERISA to the

definition of "employer" contained in the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 203(a) and (d).

The text of 29 U.S.C. § 203(a) and (d), 29 U.S.C. § 1002(5) and (9), 29 U.S.C. § 1381 and 29 U.S.C. § 1451 are presented in the appendix to the petition at pages 31a-34a.

Statement of the Case

A. *Statement of Prior Proceedings*

On August 30, 1985, Plaintiff Helen Debreceni, on behalf of the New England Teamsters and Trucking Industry Pension Fund (hereinafter "the Pension Fund") filed a Complaint against Defendants Graf Bros. Leasing, Inc., Downeast Dispatch, Inc. and F. William Graf. Through its Complaint, the Pension Fund sought to collect "withdrawal liability" pursuant to the terms of the Multi-Employer Pension Plan Amendments Act of 1980 ("MPPAA"), Pub. L. 96-364, *codified at* 29 U.S.C. §§ 1381 *et seq.* amending the Employee Retirement Income Security Act of 1974 ("ERISA"), *codified at* 29 U.S.C. §§ 1001 *et seq.* which had been incurred by Graf Bros., Inc. All Defendants answered the Complaint denying any liability for the withdrawal liability of Graf Bros., Inc.

On January 16, 1986, all Defendants filed a Motion for Summary Judgment. By Memorandum and Order dated April 2, 1986, the District Court (Mazzone, D.J.) denied the motion as to each Defendant. After further discovery, wherein it became clear that the two Defendant corporations, Downeast Dispatch, Inc. and Graf Bros. Leasing, Inc. did not meet the criteria for a "control group" with Graf Bros., Inc., the parties stipulated to the dismissal of Graf Bros. Leasing, Inc. and Downeast Dispatch, Inc. as Defendants; there was no settlement.

On January 15, 1987, the case proceeded to trial solely against Defendant F. William Graf. The evidence at trial consisted of a twelve-page stipulation of the parties, the deposition testimony of H. Terence Lyons, a financial advisor, and Peter L. Murray, an attorney who had previously represented F. William Graf, the prior testimony of F. William Graf in bankruptcy proceedings involving Graf Bros., Inc., the in-court testimony of Daniel A. Graf, nephew of F. William Graf, and various exhibits submitted by the parties.

On January 23, 1987, the District Court (Mazzone, D.J.) held that an individual may only be personally liable for a corporation's withdrawal payments if the circumstances require a piercing of the corporate veil under traditional common law principles. As the Pension Fund had stipulated that there was no basis for piercing the corporate veil under traditional common law principles, the court entered judgment for F. William Graf.

On February 24, 1987, the Pension Fund appealed from the judgment of the District Court. On September 18, 1987, the United States Court of Appeals for the First Circuit issued a judgment affirming the judgment of the District Court. (A copy of the judgment is included at page 1a of the Petition.) The United States Court of Appeals for the First Circuit affirmed the decision holding that an individual shareholder or corporate officer may not be held personally liable for a corporation's withdrawal liability, under the Multi-Employer Pension Plan Amendments Act of 1980, absent facts sufficient to "pierce the corporate veil" of the corporation. *Graf*, 828 F.2d at 878. On December 17, 1987, the Petitioner, Helen Debreceni, Fund Manager of the New England Teamsters and Trucking Industry Pension Fund sought review of the decision in this Court by filing a Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit.

B. *Factual Background*

Henry Graf, Jr., the older brother of Defendant F. William Graf, started the family trucking business in 1929.[1] The company began with one truck, hauling fish from Newburyport to Boston. From 1929 until 1951, the company operated as a partnership with the brothers Henry Graf, Jr. and F. William Graf as the two partners. The Graf Bros. trucking business grew slowly.

In 1951, the partnership was incorporated as Graf Bros., Inc. Henry Graf, Jr. and F. William Graf each owned 50% of the outstanding shares of Graf Bros., Inc. The company was incorporated in Massachusetts and had its principal place of business in Salisbury, Massachusetts. The company slowly expanded with additional trucks and trucking terminals operating throughout New England. F. William Graf served on active duty with the United States Air Force during World War II, again through the Korean conflict, and in the active reserves for twenty years. During F. William Graf's active military service, Henry Graf, Jr. was solely responsible for the Graf Bros. trucking business.

Henry Graf, Jr. died on October 22, 1965. The company purchased all of his shares, making F. William Graf the sole shareholder of Graf Bros., Inc. Henry Graf, III and Daniel A. Graf, nephews of F. William Graf, were at times given shares of Graf Bros., Inc.; however, at all times, F. William Graf remained the majority shareholder with at least 80% of the total shares. The company continued to grow and at its height in the mid-1970's had terminals in Portland, Maine, Londonberry, New Hampshire, Salisbury, Massachusetts, and Seekonk, Massachusetts.

[1] The facts are taken from the stipulation of the parties filed with the District Court as well as the exhibits and testimony presented at trial. The District Court summarized the facts in its Opinion of January 23, 1987 which appears at pages 10a-19a of the petition.

Through the early 1970's, Graf Bros. Inc. made a profit. From 1974 through 1979, Graf Bros. lost money in four of the six years. With the deregulation of the trucking industry in 1980, Graf Bros., Inc. experienced increasingly severe cash-flow problems. The company reported a loss of $326,143 for the year 1980.

Henry Graf, III died unexpectedly in 1978 leaving the company to be run by F. William Graf and Daniel A. Graf. Unfortunately, the uncle and nephew, F. William Graf and Daniel A. Graf, had a difficult personal relationship. Daniel Graf wanted to run his own company and spent increasing amounts of time conducting the affairs of Graf Bros. Leasing, Inc. and Downeast Dispatch, Inc. F. William Graf continued to run the affairs of Graf Bros., Inc.

Graf Bros., Inc. became delinquent in payments of both state and federal withholding taxes; $290,000 in federal withholding taxes and $95,000 in Massachusetts taxes. In March, 1981, F. William Graf caused Graf Realty Inc., a company of which he was president and majority shareholder, to transfer to Graf Bros., Inc. a parcel of improved land in South Portland, Maine. This land was subsequently mortgaged by Graf Bros., Inc. for $130,000.00. At the same time, in March, 1981, F. William Graf personally loaned $61,000.00 to Graf Bros., Inc. The approximately $190,000.00 provided by F. William Graf to Graf Bros., Inc. was used to pay the back tax liability. The cash flow problems at the company continued.

On October 28, 1981, F. William Graf, as sole shareholder and director of the Company, authorized himself to file a Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court for the District of Maine. *In Re: Graf Bros., Inc.*, Bankruptcy Case No. 281-00488. Thereafter, Graf Bros., Inc. continued to operate under bankruptcy court protection. In December, 1981, Graf Bros., Inc. was unable to pay the insurance premium for its trucks to operate in 1982. The insurance was

cancelled and Graf Bros., Inc. ceased operations on December 31, 1981.

On March 27, 1982, the Chapter 11 proceeding was converted to a Chapter 7 liquidation. Although the company had insufficient cash to operate, the company did have substantial assets in buildings, vehicles, and equipment which were liquidated through the Chapter 7 proceedings. Many of the creditors of Graf Bros., Inc. received full payment for their claims in the bankruptcy. The Pension Fund filed a claim in the bankruptcy for the full amount of the withdrawal liability; $1,219,949.00.[2] After proceedings in the Bankruptcy Court, the Pension Fund settled its withdrawal liability claim with the trustee of the Graf Bros., Inc. estate for $175,000.00.

From its incorporation in 1951 through its thirty year history of operations, Graf Bros., Inc. maintained its corporate form. The company kept records of its corporate meetings, minutes of the meetings of the board of directors, and corporate records. The company filed regular tax returns. For approximately fifteen years, Mr. Sidney Kotzen, a certified public accountant, kept the books and records of the company. The parties to this action have stipulated that Graf Bros., Inc. was neither a sham corporation, nor fraudulently created, and that the company did not misuse the corporate form.

At various times, Graf Bros., Inc. was involved in intercompany transfers including rent payments to Graf Realty, and rent and expense charges with Graf Bros. Leasing, Inc. and Downeast Dispatch, Inc. Although there were no formal leases and notes documenting the intercompany arrangements, all payments were recorded and accounted for on intercompany accounts by Mr. Kotzen. Plaintiff's claims against Graf Bros. Leasing, Inc. and Downeast Dispatch, Inc., which were based

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[2] The Pension Fund later recalculated the total withdrawal liability of Graf Bros., Inc., as $1,195,229.00.

on the purported existence of a "control group", were dismissed. The parties have stipulated that there were no fraudulent intercompany transfers and that no funds were fraudulently diverted from Graf Bros., Inc. to any company or individual.

The parties have also stipulated that F. William Graf did not derive any personal profit or gain from the closing of the company and the creation of the withdrawal liability. On the contrary, F. William Graf contributed his own funds and the assets of Graf Realty, Inc. to the corporation in order to pay back taxes as late as March, 1981. F. William Graf hoped to turn the company around. There is no evidence of fraudulent intent or bad faith in F. William Graf's efforts to continue the operations of Graf Bros., Inc. With the closure of the company in December, 1981, and the subsequent liquidation, F. William Graf received nothing. The parties have stipulated that there was no commingling of personal and company funds, and no personal gain by F. William Graf at the expense of the Pension Fund.

F. William Graf's medical condition has deteriorated over the last several years. He now resides in the Brigham Manor Nursing Home in Newburyport, Massachusetts. At the present time, he is incapacitated and often incoherent, failing to recognize or acknowledge his family.

Reasons for Denying the Writ

The Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, sought by Helen Debreceni, Fund Manager of the New England Teamsters and Trucking Industry Pension Fund, should be denied as it does not present a significant issue of constitutional interpretation or an important question of federal law. The decision of the United

States Court of Appeals for the First Circuit is not in conflict with other decisions from the Circuit Courts of Appeals, not in conflict with Congressional intent as expressed in the MPPAA and not in conflict with prior decisions of the United States Supreme Court. There is no compelling reason to grant the petition and hear this case.

A. *There is No Constitutional Issue or Important Question of Federal Law*

The Petition filed by the Pension Fund does not present this Court with any constitutional issue. Rather, Petitioner seeks review of the decision issued by the United States Court of Appeals for the First Circuit which held that an individual shareholder of a corporation could not be liable for the withdrawal payments due from a corporate employer under the MPPAA absent facts sufficient to "pierce the corporate veil" of the corporation. *Debreceni, Fund Manager of the New England Teamsters and Trucking Industry Pension Fund* v. *Graf*, 828 F.2d 877, 878 (1st Cir. 1987). The Petitioner opposed this interpretation of the MPPAA in the District Court, in the Court of Appeals, and now seeks review of this interpretation of federal law in the United States Supreme Court.

In place of the interpretation of federal law adopted by the United States Court of Appeals for the First Circuit, the Petitioner proposes a multi-step interpretation of the MPPAA, 29 U.S.C. § 1381, based upon an interpretation of somewhat analogous provisions of the Fair Labor Standards Act, 29 U.S.C. § 203(a), (d), as applied through ERISA. 29 U.S.C. § 1002(5), (9). Petitioner first observes that the definition of "employer" under the Fair Labor Standards Act, 29 U.S.C. § 203, has been interpreted to include controlling officers or shareholders under an "economic reality" test. See, e.g., *Donovan* v. *Agnew*, 712 F.2d 1509, 1511 (1st Cir. 1983) and *Dono-*

van v. *Sabine Irrigation Company, Inc.*, 695 F.2d 190, 194-95 (5th Cir. 1983) (officer or shareholder who in economic reality controls the corporation is individually liable for the non-payment of wages to the employees of the corporation). Second, the Petitioner analogizes this interpretation of the FLSA to the definition of employer contained in Title I of ERISA, 29 U.S.C. § 1002(5), see, e.g., *Massachusetts State Carpenters Pension Fund* v. *Atlantic Diving Co., Inc.*, 635 F. Supp. 9, 13-14 (D. Mass. 1984) (by analogy, shareholders or officers who in economic reality control the corporation are individually liable for the non-payment of current contributions to the pension fund). As a third and final step, Petitioner argues that the interpretation of employer developed under the Fair Labor Standards Act, 29 U.S.C. § 203(d), as applied to the definition of employer under ERISA, 29 U.S.C. § 1002(5), should be carried over into the MPPAA and used as the definition of an employer who is liable for a corporation's withdrawal payments. 29 U.S.C. §§ 1301, 1381. Under Petitioner's statutory construction, F. William Graf as the controlling shareholder and officer of Graf Bros., Inc. would be personally liable for the withdrawal payments due from the corporation. Both the United States District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit decided not to follow this path of statutory interpretation; there is no compelling reason for the United States Supreme Court to review that decision.

B. *There Is No Conflict in the Circuit Courts of Appeals*

The Petition for a Writ of Certiorari should be denied since there is no split of opinion in the Circuit Courts of Appeals which the United States Supreme Court should resolve. *Rules of the Supreme Court of the United States*, Rule 17.1(a). The decision of the United States Court of Appeals for the First

Circuit is consistent with the only other circuit court which has directly addressed the issue of individual shareholder liability for corporate withdrawal payments under the MPPAA. *Connors* v. *P & M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986). Although not directly addressing withdrawal liability under the MPPAA, the decision of the United States Court of Appeals for the Third Circuit which held that a controlling shareholder and officer was not an "employer" for purposes of corporate liability for current contributions to a pension fund pursuant to Title I of ERISA, *Solomon* v. *Klein*, 770 F.2d 352, 354 (3d Cir. 1985), is also consistent with the statutory analysis of the United States Court of Appeals for the First Circuit in *Graf*. See also, *Operating Engineers Pension Trust* v. *Reed*, 726 F.2d 513, 515 (9th Cir. 1984) and *Alman* v. *Danin*, 801 F.2d 1, 3-4 (1st Cir. 1986). No circuit court of appeals has interpreted either ERISA or the MPPAA in a manner conflicting with the decision of the United States Court of Appeals for the First Circuit in *Graf*.

The decision of the United States Court of Appeals for the First Circuit in *Graf* is also consistent with the vast majority of district courts which have considered the legal responsibility for withdrawal liability under the MPPAA and held that it would be inappropriate to impose such liability on individual corporate officers and shareholders absent the presence of facts sufficient to permit a piercing of the corporate veil. See *Canario* v. *Byrnes Express and Trucking Company*, 644 F. Supp. 744, 750-51 (E.D.N.Y. 1986); *Connors* v. *B.M.C. Coal Company*, 634 F. Supp. 74, 76-77 (D.D.C. 1986); *Refined Sugars, Inc.* v. *Local 807 Labor-Management Pension Fund*, 632 F. Supp. 630, 632 (S.D.N.Y. 1986); *Connors* v. *Darryll Waggle Construction Company, Inc.*, 631 F. Supp. 1188, 1191 (D.D.C. 1986); and *Combs* v. *Sun-Up Coal Co.*, 634 F. Supp. 13, 17-19 (D.D.C. 1985).

The only judicial decision which has concluded that a corporate officer or shareholder should be considered an employer for purposes of withdrawal liability, absent factors sufficient to support a piercing of the corporate veil, is *Central Pennsylvania Teamsters Pension Fund* v. *Service Group, Inc.*, 645 F. Supp. 996 (E.D. Pa. 1985). The District Court for the Eastern District of Pennsylvania is thus the only court to have followed the statutory analysis proposed by Petitioner and provides the conflict basis for Petitioner's claim for review. (Petition for a Writ of Certiorari pages 9-13). The continuing validity of the *Central Pennsylvania Teamsters Pension Fund, supra*, decision is, however, minimal. The United States Court of Appeals for the Third Circuit specifically rejected the statutory analysis on which both District Court for the Eastern District of Pennsylvania and the Petitioner rely approximately five months after the *Central Pennsylvania Teamsters Pension Fund, supra*, decision from the Eastern District of Pennsylvania. *Solomon* v. *Klein*, 770 F.2d 352 (3d Cir. August 14, 1985). Since the decision of the United States Court of Appeals for the Third Circuit in *Solomon* v. *Klein, supra*, no court has followed the statutory analysis of the Eastern District of Pennsylvania as presented in *Central Pennsylvania Teamsters Pension Fund* v. *Service Group, Inc.*, 645 F. Supp. 996 (E.D. Pa. 1985).

There is simply no conflict with the *Graf* decision of the United States Court of Appeals for the First Circuit in the United States Courts of Appeals or in the United States District Courts. There is no circuit or state in which the rights of pensioners or the duties and liabilities of employers and pension funds are different as a result of the decision of the United States Court of Appeals for the First Circuit in *Graf*. Thus, there is neither an important unsettled question of federal law, nor the likelihood of recurring litigation to resolve an unsettled question, nor conflicting results in the district courts, which

might justify the exercise of certiorari even absent conflict between the circuits. Cf. *United States* v. *Constantine*, 296 U.S. 287, 290 (1935) (certiorari granted where there were diverse decisions in the district courts and many other cases pending). The Petition for a Writ of Certiorari should be denied.

C. *There Is No Conflict With Congressional Intent*

The Petition for Writ of Certiorari should be denied because there is no conflict between the decision of the United States Court of Appeals for the First Circuit in *Graf* and the Congressional intent in enacting either ERISA or the MPPAA. Petitioner argues that her Petition for a Writ of Certiorari should be granted to resolve a perceived conflict between the *Graf* decision of the United States Court of Appeals for the First Circuit and the Congressional intent in adopting ERISA and the MPPAA. There is, however, no such conflict and, if such a conflict did exist, Congress could resolve it by passing a further amending statute. There is simply no need for review by the United States Supreme Court to resolve this supposed conflict.

The United States Court of Appeals for the First Circuit in *Graf* reviewed the legislative history of the MPPAA and properly concluded that Congress had intentionally left the definition of an "employer" liable for withdrawal payments under the MPPAA to the courts. *Graf*, 828 F.2d at 880. The United States Court of Appeals for the First Circuit also examined the purpose of the MPPAA as described in the legislative history of the act and determined that the balance between the short term requirement of protecting existing pension plan beneficiaries and the long term strategy of encouraging new employers to contribute to multi-employer pension funds was properly set by Congress and would be upset by the imposition

of personal liability for withdrawal payments because controlling individuals would be discouraged from directing their corporations to participate in multi-employer pension funds. *Graf*, 828 F.2d at 880; see H.R. No. 96-869, 96th Cong., 2d Sess., *Reprinted in* 1980 U.S. Code Cong. & Admin. News at 2918, 2919-20, and 2935. Thus, the *Graf* decision is consistent with the purpose and Congressional intent in enacting the MPPAA.

If, Congress chooses to shift the balance by imposing further burdens on employers through individual shareholder liability for withdrawal payments, Congress may clearly do so through additional amendments to ERISA and the MPPAA. Congress corrected certain perceived problems in ERISA through the adoption of the MPPAA and may well at a later date choose to further refine or extend the overall statutory scheme to further safeguard the solvency of private pension plans. See *Connolly* v. *PBGC*, 475 U.S. 211, 227-228 (1986). That Petitioner urges the adoption of such a position is not a basis for granting the Writ of Certiorari but is rather a position properly submitted to Congress.

D. *There Is No Conflict With Prior Decisions of the Court*

The Petition for a Writ of Certiorari should be denied because the decision of the United States Court of Appeals for the First Circuit in *Graf* does not conflict with prior decisions of this Court concerning the need for uniform application of a federal system of pension rights and liabilities or with the federal preemption of state law in regard to employee benefit plans. 29 U.S.C. § 1144(a); *Pilot Life Insurance Co.* v. *Dedeaux*, ____ U.S. ____, 107 S. Ct. 1549 (1987); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724 (1985); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). The deci-

sion of the United States Court of Appeals for the First Circuit in *Graf*, does not involve either the unwarranted incursion of state common law principles into the federal statutory framework or the assertion of state legislative authority in an area otherwise covered by federal labor law. See, e.g., *Pilot Life Insurance Co.* v. *Dedeaux*, ____ U.S. ____, 107 S. Ct. 1549, 1552 (1987) (plaintiff's state law claims for breach of contract and tort alleging the improper processing of a claim for benefits under an ERISA regulated plan, preempted by federal law) and *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724 (1985) (state statute requiring mental health coverage in all group insurance plans not preempted by federal law). Rather, the *Graf* decision involves the acknowledgment that the principle of limited shareholder liability for corporate debts is both longstanding and important enough to be considered the background norm against which Congress might act but which is controlling in the absence of such action. *Graf*, 828 F.2d at 880; *Connors* v. *P & M Coal Co.*, 801 F.2d at 1376. Rather than injecting state law into the federal statutory context, the United States Court of Appeals in *Graf* interpreted the federal statutory scheme against the "background norm" of basic corporate law. *Graf*, 828 F.2d at 879-880. The determination whether the corporate veil properly shields Respondent F. William Graf is a matter of federal substantive law, with state common law acting as a reference guide. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456-457 (1957); *Seymour* v. *Hull & Moreland Engineering*, 605 F.2d 1105, 1109-1111 (9th Cir. 1979); *Trustees of UIU Health & Welfare Fund* v. *New York Flame Proofing Co.*, 649 F. Supp. 843, 847 (S.D.N.Y. 1986). The basic concepts of a corporation, shareholder, employer, and employee arise from state and common law and form the underlying concepts for the statutory framework. As a matter of federal law, Congress could specifically change these underlying concepts and re-

lationships as part of ERISA or the MPPAA, but in regard to personal shareholder liability for corporate withdrawal payments, has not. The judgment and decision of the United States Court of Appeals for the First Circuit does not create a situation where the federal courts, the state courts or any legislature is asserting jurisdiction over the federal administration of pension plans or interfering with the uniform application of federal law. There is therefore no cause for the United States Supreme Court to grant a writ of certiorari to correct such a problem. The petition should be denied.

Conclusion

Respondent F. William Graf respectfully urges that the Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit be denied as there is no constitutional issue, no conflict among the Circuit Courts of the United States, no viable conflict among the United States District Courts, no conflict with Congressional intent or purpose, and no conflict with prior decisions of this Court created by the decision of the United States Court of Appeals for the First Circuit in *Debreceni, Fund Manager of the New England Teamsters and Trucking Industry Pension Fund* v. *F. William Graf*. The Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit should be denied.

Respectfully submitted,

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